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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,440	07/13/2001	Naoki Watanabe	36992.00081	5821

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EXAMINER

TRAN, NGHI V

ART UNIT PAPER NUMBER

2151

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/905,440

Applicant(s)

WATANABE ET AL

Examiner

Nghi V. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 13, 2005 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-9, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al., U.S. Patent No. 6,324,654 (hereinafter Wahl), in view of Weber, U.S. Patent No. 6,424,993 (hereinafter Weber).

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4. With respect to claims 1, 9, and 20, Wahl teaches a method of performing an initial copy procedure in a remote copy system [see abstract and figs.1&5], the method comprising:

- configuring a network path between a first disk subsystem [i.e. primary system] and a second disk subsystem [i.e. secondary system] to increase the speed of data transmission [i.e. allow network bandwidth to be added to a network connection] across the network path [col.25, lns.1-10; and fig.1];
- after the configuring the network path, configuring the remote copy system for a remote copy operation [figure 1; and see abstract];
- after the configuring the remote copy system, performing an initial remote copy operation to copy data across the network path from the first disk subsystem to the second disk subsystem [column 4, lines 14-33]; and

However, Yanai does not explicitly show adjusting the network path to reduce the speed of data transmission across the network path, thereby reducing the speed of at least one subsequent remote copy operation between the first disk system and the second disk system.

In a related art, Weber suggests or discloses adjusting the network path to reduce the speed of data transmission across the network path, thereby reducing the speed of at least one subsequent remote copy operation between the first disk system and the second disk system [col.1, ln.25 -38].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Wahl in view of Weber by adjusting the

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network path to reduce the speed of the data transmission across the network path because this feature can reduce operations costs [Weber, col.1, ln.33]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify in order to reduce bandwidth costs [Weber, col.1, ln.37].

5. With respect to claim 2, Wahl further teaches the first disk subsystem is located in a master site [figure 1].

6. With respect to claim 3, Wahl further teaches the first disk subsystem is located in a manufacturer site [figure 1].

7. With respect to claim 4, Wahl further teaches deploying the second disk subsystem to a remote site [figure 1].

8. With respect to claim 5, Wahl further teaches the configuring the remote copy system comprises: selecting multiple physical paths in the network path to transmit data across the path [column 24, line 44 through column 24, line 10].

9. With respect to claim 6, Wahl further teaches the configuring the remote copy system comprises: increasing a data transfer rate characteristic of the network path [column 3, lines 39-44].

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10. With respect to claim 8, Wahl further teaches decreasing the data transfer rate [col.16, Ins.17-63 i.e. slow down data transfer].

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over both Wahl and Weber, and further in view of Gallant et al., U.S. Patent Application Publication No. 2002/0067727 (hereinafter Gallant).

12. With respect to claim 7, Wahl does not explicitly show reducing the number of physical paths.

In a related art, Gallant discloses adjusting the network path comprises: reducing the number of physical paths [i.e. SVC] in the network path for transmitting data [paragraphs 0010-0013].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify both Wahl and Weber, and further in view of Gallant by reducing the number of physical paths because this feature may save capital costs [Gallant, paragraph 0013]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify in order to save capital costs by reducing the amount of bandwidth needed [Gallant, paragraph 0013].

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9 and 20 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

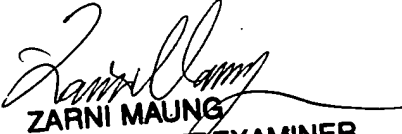
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi V. Tran whose telephone number is (571) 272-4067. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nghi V Tran  
Patent Examiner  
Art Unit 2151

NT

  
ZARNI MAUNG  
SUPERVISORY PATENT EXAMINER